

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AUXIER WATER COMPANY

COMPLAINANT

v.

CITY OF PRESTONSBURG AND
PRESTONSBURG CITY'S UTILITY
COMMISSION

)
)
)
) CASE NO. 96-362
)
)
)
)

ORDER TO SATISFY OR ANSWER


The City of Prestonsburg and the Prestonsburg City's Utility Commission ("Prestonsburg") is hereby notified that it has been named as defendant in a formal complaint filed on July 25, 1996, a copy of which is attached hereto.

Pursuant to 807 KAR 5:001, Section 12, Prestonsburg is HEREBY ORDERED to satisfy the matters complained of or file a written answer to the complaint within 10 days from the date of service of this Order.

Should documents of any kind be filed with the Commission in the course of this proceeding, the documents shall also be served on all parties of record.

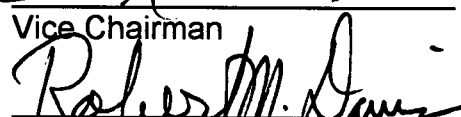
Done at Frankfort, Kentucky, this 7th day of August, 1996.

PUBLIC SERVICE COMMISSION


Chairman



Vice Chairman


Commissioner

ATTEST:



Executive Director

Daton

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

AUXIER WATER COMPANY

PETITIONER

v.

COMPLAINT

96-362

CITY OF PRESTONSBURG and PRESTONSBURG
CITY'S UTILITY COMMISSION

RESPONDENT

PUBLIC SERVICE
COMMISSION

JUL 25 4 37 PM '96

* * * * *

Comes the Complainant, Auxier Water Company ("Auxier") and for its Complaint against the City of Prestonsburg and the Prestonsburg City's Utilities Commission ("Prestonsburg"), states and alleges as follows:

PARTIES

1. Auxier is a private water utility authorized and created pursuant to the Kentucky Revised Statutes. Auxier provides retail water service to customers in Floyd County, Kentucky. Auxier is regulated by and subject to the jurisdiction of the Kentucky Public Service Commission.

2. The Prestonsburg City's Utilities Commission is a commission authorized and created by the City of Prestonsburg. Prestonsburg provides both retail water service to citizens of the City of Prestonsburg and wholesale water service through contracts with regulated public utility companies (including Auxier) and to several water associations in adjacent and contiguous territory.

JURISDICTION

3. By this Complaint, Auxier seeks an adjudication of its rights as to rates and service provided by Prestonsburg as Auxier's wholesale water supplier.

4. This Commission has jurisdiction over the instant dispute pursuant to KRS 278.200 and Simpson County Water District v. City of Franklin, Ky., 872 S.W.2d 460 (1994).

COUNT I

5. Auxier and Prestonsburg entered into a contract on September 25, 1976 ("the Contract") in which Prestonsburg agreed to provide wholesale water to Auxier. The Contract is attached as Exhibit 1.

6. Auxier has no other source of water other than Prestonsburg.

7. The Contract (§ 5) establishes a rate of \$5.00 for the first 2,000 gallons; \$1.80 per 1,000 gallons for water in excess of 2,000 gallons but less than 100,000 gallons; and \$1.05 per gallon for 1,000 gallons of water in excess of 100,000 gallons.

8. The Contract (§ 6) further provides that the rate can be modified if Prestonsburg were required to increase the rates it charged the residents of the City of Prestonsburg. The new rate under this contract provision was to be the "same rates that are being charged for any other person using City water and not residing within the City limits of the City of Prestonsburg, Kentucky."

9. Currently, Prestonsburg charges Auxier \$2.02 per 1000 gallons. For service which requires a booster pump, Prestonsburg charges Auxier \$2.12 per 1000 gallons.

10. The current rate charged by Prestonsburg to Auxier is unjust and unreasonable and contrary to the terms of the contract entered into by the parties.

11. In the absence of a lawful rate, Prestonsburg must establish a new rate pursuant to the procedures outlined in KRS 278.200 and 807 KAR 5:001.

COUNT II

12. The contract between the parties purports to terminate on September 25, 1996.

13. Prestonsburg, as the sole supplier of water to Auxier and its customers, has an overriding, inherent obligation to continue service beyond September 25, 1996 as a matter of public trust and safety.

14. In November 1991, Prestonsburg applied with the Kentucky Infrastructure Authority ("KIA") for a 20-year loan to expand the water treatment facility and for the construction of transmission mains. The project expanded the treatment facility capacity from 3.0 million gallons per day to 5.0 million gallons per day.

15. On or about May 1, 1993, the KIA and Prestonsburg entered into a binding agreement in which KIA loaned Prestonsburg \$2,001,993.00. The cover sheet and signature sheet of the agreement is attached as Exhibit 2.

16. The loan was subject to the terms and conditions outlined in the agreement.

17. In support of its loan application, and as ultimately included as a material element of the loan agreement, Prestonsburg stated that the project would benefit the entire region (including the area served by Auxier) and was necessary to sustain growth in the residential, commercial and industrial sectors of the local economy.

18. To finance the debt service on the loan, Prestonsburg agreed to a \$.37/1000 gallons increase to the rates on all customers (both retail and wholesale) of its water system. This rate increase was to be in effect the entire length of the loan period -- 20 years.

19. The .37/1000 gallons rate increase to all of Prestonsburg's customers (including city customers as well as Auxier) was a material element of the agreement between KIA and Prestonsburg.

20. Prestonsburg increased the wholesale water rates of all its wholesale customers, including Auxier, to pay for the expansion project.

21. Contrary to the declarations and commitment made in the loan agreement, Prestonsburg did not increase the retail rates charged to customers residing within the City of Prestonsburg.

22. The wholesale water customers, including Auxier, shouldered the entire cost of the expansion project despite the assurances made by Prestonsburg that Prestonsburg's retail

customers would share the costs, and despite the fact the project benefitted both retail and wholesale customers.

23. Since Prestonsburg pledged in its agreement with the KIA that the expansion project was to serve all of the area then being served by Prestonsburg both at retail and wholesale, as well as to serve future growth outside the city limits, and since Auxier (purportedly along with all other customers) was to and continues to finance the debt service for the water expansion project for 20 years from the date of the loan, Prestonsburg has an obligation to continue supplying water to Auxier from the current Prestonsburg water treatment plant for at least that period of time.

24. Auxier and the other wholesale water companies, by bearing the cost of the Prestonsburg water expansion project, are entitled to the current and future water supply of that expansion.

25. Pursuant to its authority under KRS 278.200 the Commission must establish fair, just, and reasonable terms of Prestonsburg's future supply of water to Auxier (including volume and length of service).

COUNT III

26. KRS 96.150 prevents cities from providing utility service not contiguous with its boundaries.

27. Pursuant to KRS 96.150, Prestonsburg is prohibited from asserting the right to serve areas lying east of the Big Sandy

River including areas located in Martin, Floyd, and Johnson Counties Kentucky.

28. On December 11, 1967, Prestonsburg entered in an agreement with Auxier ("the 1967 Agreement") in which the parties defined their respective territories. The 1967 Agreement is attached as Exhibit 3.

29. The 1967 Agreement established Auxier's exclusive right to serve those commercial and industrial businesses lying to the east of the Big Sandy River.

30. The Kentucky Public Service Commission approved the 1967 Agreement by Order dated February 14, 1968. The Commission's Order is attached as Exhibit 4.

31. Auxier also owns and operates a water line in Johnson County, Kentucky that provides service in the Johns Creek area.

32. Auxier provides this service pursuant to an agreement entered into with Johnson County Water District and Johnson County Fiscal Court dated February 31, 1984, which is attached as Exhibit 5.

33. By virtue of KRS 96.150, the PSC Order dated February 14, 1968, and Auxier's current water service in Johnson County, the PSC must prevent Prestonsburg from asserting the right to serve areas lying east of the Big Sandy River including areas located in Martin, Floyd, and Johnson Counties Kentucky.

WHEREFORE Auxier Water Company prays for an Order from this Commission:

(1) Declaring and adjudging that Prestonsburg's wholesale water rate of \$2.02/\$2.12 per 1000 gallons charged to Auxier is unfair, unjust, and unreasonable pursuant to KRS 278.190, KRS 278.260, and contrary to the terms of the contract between the parties.

(2) Establishing a hearing pursuant to KRS 278.190 and KRS 278.260 to set a fair, just, and reasonable wholesale water rate that Prestonsburg may lawfully charge Auxier.

(3) Pursuant to KRS 278.260 declaring and adjudging a fair, just, and reasonable length for the period of time Prestonsburg is to provide wholesale water to Auxier and its customers.

(4) Pursuant to KRS 278.260, declaring and adjudging fair, just, and reasonable terms for the volume of water Prestonsburg is to provide Auxier.

(5) Preventing Prestonsburg from serving those areas not lying contiguous with Prestonsburg's city boundaries.

Respectfully submitted,



Bruce F. Clark
Jason P. Thomas
STITES & HARBISON
421 West Main Street
P. O. Box 634
Frankfort, Kentucky 40602-0634
Telephone: (502) 223-3477
COUNSEL FOR AUXIER WATER COMPANY

20 year contract

THIS AGREEMENT, made and entered into this the 25th day of September, 1976, by and between CITY UTILITIES COMMISSION OF THE CITY OF PRESTONSBURG, KENTUCKY, party of the first part, and FORREST MUSIC, D/B/A AUXIER WATER COMPANY, party of the second part.

WITNESSETH:

That the parties hereto, for and in consideration of the covenants of this agreement hereinafter set out, to be paid, kept, and performed, hereby agree as follows:

(1) The party of the first part agrees to furnish to the party of the second part, at the point of delivery which is located at the site of the Highlands Hospital, during the term of this contract, or any renewal or extension thereof, potable treated water meeting applicable purity standards of the Kentucky Department of Health at the point of delivery in such quantities as may be required by the party of the second part, not to exceed 100,000 gallons per day of twenty-four hours.

(2) Water will be furnished at a reasonably constant pressure at 40 p.s.i. from an existing 10-inch main supply at a point located near the new Highlands Hospital. If a greater pressure than that normally available at the point of delivery is required by the party of the second part, the cost of providing such greater pressure shall be borne by the party of the second part. Emergency failures of pressure or supply due to main supply line breaks, power failure, flood, fire and use of water to fight fire, earthquake or other catastrophe shall excuse the party of the first part from this provision for such reasonable period of time as may be necessary to restore service.

(3) The party of the first part agrees to furnish, install, operate, and maintain at its own expense at point of

delivery, the necessary metering equipment, including a meter house or pit, and required devices of standard type for properly measuring the quantity of water delivered to the party of the second part and to calibrate such metering equipment whenever requested by the party of the second part but not more frequently than once every twelve (12) months. A meter registering not more than two percent (2%) above or below the test result shall be deemed to be accurate. The previous readings of any meter disclosed by test to be inaccurate shall be corrected for the three (3) months previous to such test in accordance with the percentage of inaccuracy found by such tests. If any meter fails to register for any period, the amount of water furnished during such period shall be deemed to be the amount of water delivered in the corresponding period immediately prior to the failure, unless party of the first part and party of the second part shall agree upon a different amount. The metering equipment shall be read between the first and fifth days each month following the month in which water has been furnished to party of the second part by party of the first part. An appropriate official of the party of the second part at all reasonable times shall have access to the meter for the purpose of verifying its readings.

(4) The party of the first part agrees to furnish the party of the second part at his address at Auxier, Kentucky, once each month, a statement of the amount of water furnished the party of the second part during the preceding month.

(5) The party of the second part agrees to pay the party of the first part not later than the 20th day of each month for water delivered in accordance with this agreement at the following rates:

A. Five (\$5.00) Dollars for the first 2,000 gallons, which amount shall also be the minimum rate per month.

B. One-Dollar, Eighty Cents (\$1.80) per 1,000 gallons for water in excess of 2,000 gallons but less than 100,000 gallons.

C. One-Dollar and Five Cents (\$1.05) per gallon for 1,000 gallons of water in excess of 100,000 gallons.

D. The minimum bill under this rate shall be the sum of \$100.00.

(6) In the event the party of the first part is required to increase the water rates charged the residents of Prestonsburg, Kentucky, then this contract is subject to the provision that the rate schedule be modified so as to charge party of the second part the same rates that are being charged for any other person using City water and not residing within the City limits of the City of Prestonsburg, Kentucky.

(7) This contract shall extend for a period of 20 years from the date hereof and thereafter may be renewed or extended for such term or terms as may be agreed upon by the parties hereto.

(8) It is a special condition of this contract in consideration of the rate charged party of the second part that party of the second part agrees not to purchase any water supply from any other person, firm, or corporation other than the party of the first part so long as this agreement is in effect.

(9) The party of the first part is not to be responsible in any way for failure of party of the second part to furnish sufficient water for fire protection purposes.

(10) The party of the second part shall be responsible for any chlorination of the water furnished by party of the first part, if such chlorination is required by the Floyd County Department of Health.

(11) The party of the first part will, at all times, operate and maintain its system in an efficient manner and will take such action as may be necessary to furnish the party of the second part with quantities of water required by the party of the second part. Temporary or partial failures to deliver water shall be remedied with all possible dispatch. In the event of an extended shortage of water, or the supply of water available to the party of the first part is otherwise diminished over an extended period of time, the supply of water to party of the second part's consumers shall be reduced or diminished in the same ratio or proportion as the supply to party of the first part's consumers is reduced or diminished.

(12) In the event any occurrence takes place which renders the party of the second part incapable of performing under this contract, any successor of the party of the second part, whether the result of legal process, assignment, or otherwise, shall succeed to the rights of the party of the second part hereunder, and this agreement shall extend to and be binding upon the successors of party of the first part and party of the second part.

(13) In the event the water bill of party of the second part is not paid, the party of the first part, upon reasonable notice to the party of the second part, may disconnect the water and is not required to furnish water in the future until all past bills are paid.

(14) If the party of the first part does not have a sufficient supply of water to supply its consumers of the City of Prestonsburg, Kentucky, then the party of the first part, at its discretion, may reduce the amount of water to be furnished to the

party of the second part under this agreement so long as the furnishing of such water shall endanger the furnishing of water to the consumers of the City of Prestonsburg, Kentucky.

WHEREAS, Highlands Regional Medical Center is a consumer of the Auxier Water Company, and

WHEREAS, public policy and the general welfare of the community dictate that water service be continued to said hospital in case of the cut-off of water supply by Prestonsburg Water and Gas Commission to Auxier Water Company, due to said defaults in payment,

NOW THEREFORE, in consideration of the mutual promises and covenants as contained herein, the parties do hereby agree as follows:

(15) That in the event that Prestonsburg Water and Gas Commission finds it necessary to cut off all water supply to Auxier Water Company, due to the default in payment of said Auxier Water Company, the party of the second part agrees that the water to Highlands Regional Medical Center shall continue to be furnished through a separate meter and will not be cut off.

(16) That Forrest Music, d/b/a Auxier Water Company, expressly agrees that the Prestonsburg Water and Gas Commission may serve the Highlands Regional Medical Center during such periods that he cannot supply service to said hospital; and that the Prestonsburg Water and Gas Commission may bill the hospital directly for all water so furnished at the prevailing rate charged by the Auxier Water Company. It is also agreed and understood by all parties hereto that Highlands Regional Medical Center shall pay all such billings directly to Prestonsburg Water and Gas Commission and that said Forrest Music, d/b/a Auxier Water Company, shall not be entitled to any rebate, credit, or monies whatsoever from such billings.

IN WITNESS WHEREOF, the parties hereto have caused this Assistance Agreement to be executed by their respective duly authorized officers as of the day and year above written.

ATTEST:

KENTUCKY INFRASTRUCTURE
AUTHORITY

Maureen Eaton-Thoma
Title Secretary/Treasurer

By William Rerner
Title Executive Director

ATTEST:

GOVERNMENTAL AGENCY:
CITY OF PRESTONSBURG, KENTUCKY

By: Sue W. Webb
Title: City Clerk

By: R. R. Ratter
Title: Mayor

APPROVED:

[Signature]
SECRETARY/FINANCE AND
ADMINISTRATION CABINET OF THE
COMMONWEALTH OF KENTUCKY

EXAMINED:

Peck, Shaffer + Williams
LEGAL COUNSEL TO THE KENTUCKY
INFRASTRUCTURE AUTHORITY

AGREEMENT

THIS AGREEMENT, made and entered into this 11 day of December, 1967, by and between FORREST MUSIC, D/B/A AUXIER WATER COMPANY, Auxier, Floyd County, Kentucky, Party of the First Part, hereinafter sometimes referred to as "AUXIER", and the PRESTONSBURG CITY UTILITY COMMISSION, an agency of the City of Prestonsburg, Kentucky, Party of the Second Part, hereinafter sometimes referred to as "CITY",

WITNESSETH: That

WHEREAS, the Auxier Water Company is a public utility operating under the provisions of the laws of the State of Kentucky, and has been granted a Certificate of Public Convenience and Necessity to maintain and operate a water filtration plant and distribution system in Auxier, Kentucky, and vicinity, pursuant to an order of the Public Service Commission of Kentucky in Case Number 4700, dated August 10, 1966, and

WHEREAS, the Prestonsburg City Utility Commission desires to provide water service to certain prospective consumers located in the area served by Auxier, and has received and accepted an offer of loan and grant from the Economic Development Administration, United States Department of Commerce, United States of America in connection with Project No. 03-1-00353, which said offer was dated May 17th, 1967, and

WHEREAS, in order to qualify for said loan and grant, in its entirety, it is necessary that Auxier Water Company relinquish certain portions of its service area, as hereinafter more fully described and delineated in Exhibit Number 1 attached hereto, and

EXHIBIT A

WHEREAS, in consideration of the agreement of Auxier Water Company to relinquish certain rights in said area, the City desires to make available to Auxier a firm future supply of water from the City of Prestonsburg, Kentucky.

NOW, THEREFORE, in consideration of the premises and the covenants, stipulations and conditions hereinafter contained, the parties do hereby mutually agree as follows:

1. The Auxier Water Company hereby completely relinquishes that portion of its service area lying southwest of the Levisa Fork of the Big Sandy River, which said area is more specifically delineated as Area "A" on Exhibit Number 1 attached hereto.

2. The Auxier Water Company hereby grants to City the privilege and right to extend its ten (10") inch water main into that portion of its service area designated as Area "B" on the exhibit attached hereto. This privilege and right is granted solely to the City for the purpose of making available adequate water pressure and volume to provide fire protection for prospective industrial development, as contemplated under the regulations of the Economic Development Administration, with respect to the establishment of industry and the promotion of new employment. Auxier will be permitted to continue to serve water to all domestic, commercial and industrial consumers in Area "B".

3. In consideration of the foregoing, the City hereby agrees to sell water to Auxier at the minimum wholesale rate permitted by ordinance of the City of Prestonsburg, regulating same, and by conditions and regulations imposed by affected governmental agencies of the United States of America; such rate to be based on the cost of production of said water, as determined by Howard K. Bell, Consultant Engineers, Inc., Lexington, Kentucky.

4. Auxier will be entitled to purchase water from the City at any time after its ten (10") inch water main is constructed and completed to Area "B", described in the attached exhibit. At such time as Auxier desires to purchase water from the City, it shall give notice of such intention and the City will set a meter of adequate size at a location mutually agreed upon by the parties hereto. The cost of the meter and the expense of its installation and maintenance will be borne solely by the City. The specific terms of the agreement with respect to the purchase of water by Auxier from City shall be detailed in a separate purchase contract.

It is understood by and between the parties hereto that Auxier does not relinquish any rights or privileges to serve water to consumers in any other area except as herein specifically set out and detailed on the attached exhibit.

Dated as of the day and year first above written.

FORREST MUSIC, D/B/A
AUXIER WATER COMPANY
(PARTY OF THE FIRST PART)

Forrest Music
FORREST MUSIC

PRESTONSBURG CITY UTILITY COMMISSION
(PARTY OF THE SECOND PART)

By: *William D. Gachet*
CHAIRMAN

ATTEST:

Richard Lewis
SUPERINTENDENT

ENDORSEMENT

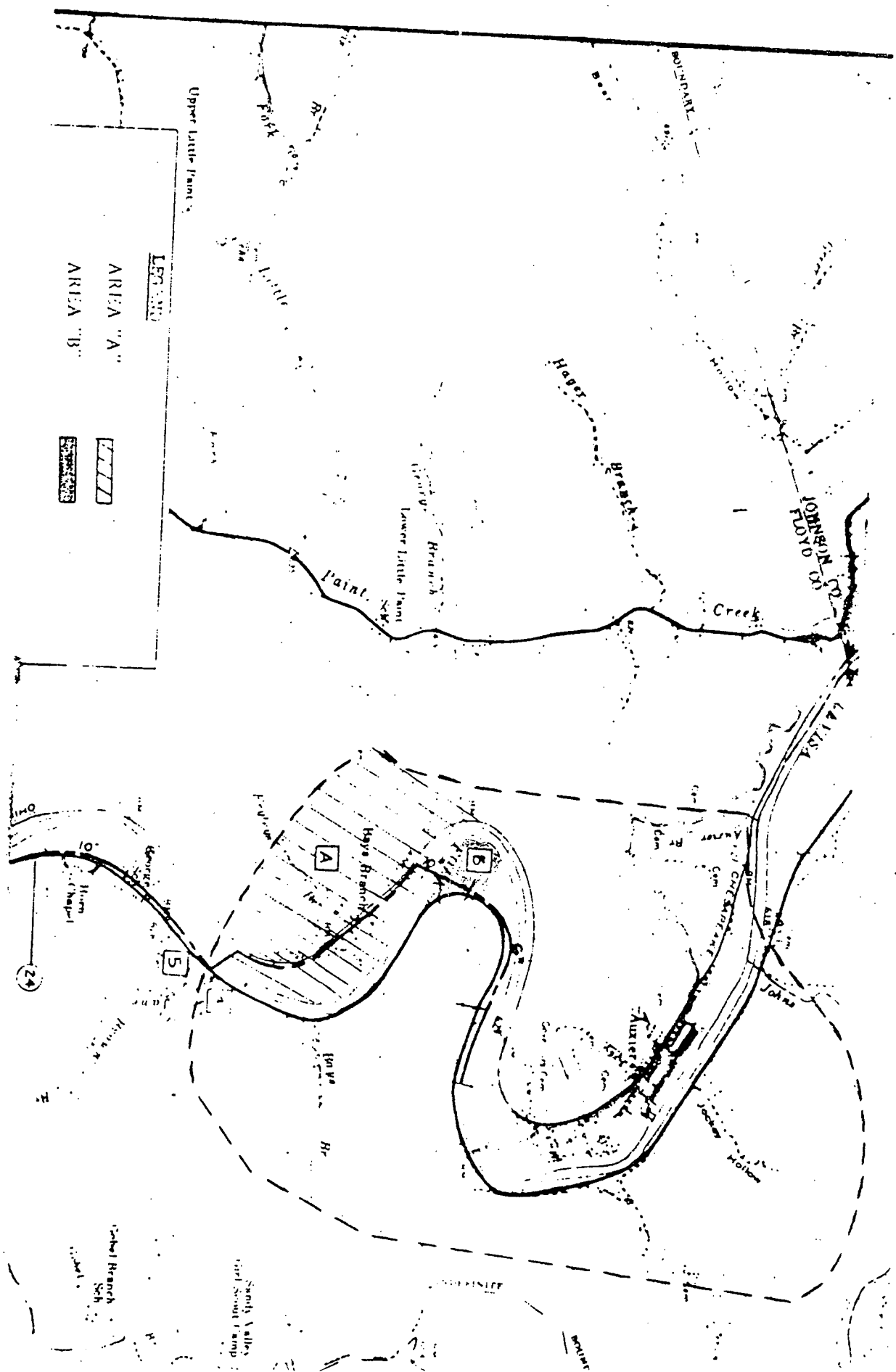
The foregoing agreement having been read and considered by the City Council of the City of Prestonsburg, Kentucky, and a motion having been made to approve the action of the Prestonsburg City Utility Commission, the Mayor and City Clerk were hereby authorized to endorse said agreement signifying the approval and concurrence of the City of Prestonsburg, Kentucky

Dated: This _____ day of December, 1967.

George B. Archer
MAYOR

ATTEST:

Janith D. Archer
CITY CLERK



BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKY

A meeting of the Public Service Commission was held this date. Present: Chairman J. David Francis and Commissioners Woodrow W. Burchett and Wells T. Lovett.

* * * * *

In the Matter of

THE JOINT APPLICATION OF FORREST)	
MUSIC, D/B/A AUXIER WATER COMPANY)	
AND THE PRESTONSBURG CITY UTILITY)	
COMMISSION, AN AGENCY OF THE CITY)	
OF PRESTONSBURG, KENTUCKY FOR APPROVAL)	
OF A CONTRACT BETWEEN SAID PARTIES)	CASE NO. 4972
DATED DECEMBER 11, 1967 RELINQUISHING)	
CERTAIN AREA UNDER CERTIFICATE TO)	
AUXIER WATER COMPANY AND DEFINING THE)	
RIGHTS AND PRIVILEGES OF SAID PARTIES)	
TO OTHER AREAS.)	

PREFACE

On December 20, 1967, a Joint Application of Forrest Music, D/B/A Auxier Water Company and Prestonsburg City Utility Commission an agency of the City of Prestonsburg, Kentucky, was filed with this Commission seeking approval of a Contract between the above parties dated December 11, 1967 in which Auxier Water Company would relinquish certain territory not being served South and Southwest of the Industrial Park in return for other rights and privileges as set forth in the Application and Contract.

OPINION AND ORDER

After a review of the record and being fully advised, the Commission is of the opinion and finds that the Contract between the two aforementioned parties is in the public interest and should be approved in that it will permit service to areas not presently being served and will also guarantee Auxier Water Company an additional water supply source not only for the present customers, if needed, but also for service to the Industrial Park.

IT IS THEREFORE ORDERED That the area designated in the Application and Contract as Area "A" be and is hereby deleted from the Auxier Water Company's service area.

IT IS FURTHER ORDERED That the Contract entered into by the Auxier Water Company and the Prestonsburg City Utility Commission as of December 11, 1967 be and is hereby approved.

Done at Frankfort, Kentucky, this 14th day of February, 1968.

By the Commission

ATTEST:

Secretary

AGREEMENT

THIS AGREEMENT entered into this 31 day of February, 1984
by and between JOHNSON COUNTY WATER DISTRICT AND JOHNSON COUNTY FISCAL
COURT hereinafter referred to as County, parties of the first part and
THE AUXIER WATER COMPANY, Inc. of Auxier, Floyd County, Kentucky, hereinafter
referred to as Auxier Water, party of the second part;

WHEREAS the Johnson County Water District has recently petitioned the
Johnson County Fiscal Court to incorporate into the water district the
area of Johnson County known as Johns Creek in hopes of providing water
service to the residents of this area via federal and state funds and

WHEREAS the Auxier Water Company is located adjacent to the Johns
Creek area and presently has a water line as far east as the Johns Creek
road at the northeast property line of the B. W. McDonald property, and

WHEREAS the Auxier Water Company wishes to provide service to the
residents of Johnson County area and the County desires to provide water
service to the residents of this area also as soon as possible.

WITNESSETH: The parties hereto upon the mutual promises and covenants
herein agree as follows:

1.) That the Auxier Water Company is hereby granted permission by
the County to lay at its cost a water line which shall meet the federal
standards necessary to comply with the application for federal and state
funds beginning at the eastern boundary of the property known as the B. W.
McDonald property located on Johns Creek road to the Richmond Hill Subdivision
and to tie in to the subdivision as a supply line. Auxier Water Company

hereby agrees that in the event that the Johnson County Water District is successful in applying for federal and state funds then the Johnson County Water District shall have the right to acquire the line laid as described above at the cost of Auxier Water conditioned upon receiving federal or state funds to finance a project to provide water service to all of the residents of the Johns Creek area.

2.) That in the event that federal and state funds are acquired Auxier Water Company hereby agrees to provide a water purchase contract to the county at the cost of service at the point of delivery being the east boundary line of the property known as B. W. McDonald property on Johns Creek Road.

3.) That the county shall negotiate a financial and field management agreement which shall include the operation, maintenance, billing and accounting for the line and extensions thereof to be laid with federal or state funds with Auxier Water Company. The agreement shall be based upon the payment of the following in the order enumerated below.

A. Payment of the indebtedness incurred for the building of the water lines and/or appurtenances on Johns Creek.

B. Payment of the water purchased as dictated above.

C. Remaining funds collected as a result of services rendered to Johns Creek residents to be paid to the Auxier Water Company for their services as financial and field management contractors.

D. Auxier Water Company as shall be stipulated in the financial and field management services contract shall furnish reports to the Johnson County Water District as required on a monthly basis or at any interval requested by the county.

4.) Upon retirement of the indebtedness incurred as a result of the federal and state funding program for the construction of the Johns Creek water line and appurtenances and the proper performance of Auxier Water Company of all contractual obligations referenced herein as the financial and field management services contract the county hereby agrees to relinquish and sell to the Auxier Water Company for the purchase price of \$1.00 the water lines constructed with the aid of federal and state funds including all appurtenances thereto and included in this agreement.

5.) Auxier Water Company in return for the mutual promises and covenants herein agrees that in the event that federal or state funds do not become available for the Johns Creek Water line project they will meet the following schedule:

- A. Water services to Music Branch by the end of 1984.
- B. Water Services to Pea Point by the end of 1985.
- C. Water Services to the county line at the end of 1986.

6.) In the event that federal or state funds are not acquired by the county for this project the Johnson County Fiscal Court shall take the necessary steps to reduce or strike the area known as Johns Creek from the Johnson County Water District.

7.) FORCE MAJEURE: Should any delay in the performance of this contract be caused by other contractors on the work without the fault of the Auxier Water Company or by general labor strikes or lockouts in the building trade or by fire or other accident causes not due to the wrongful act or default of said Auxier Water Company as well as economic conditions or Public Service Commission approval delays, said Auxier Water Company shall be granted a delay in the completion of said work as described herein until such time as all necessary requirements are available for the further construction of said water lines.

8.) In the event that any portion of this contract shall be declared invalid it shall in no way effect the remaining portions of the contract.

9.) This contract shall be binding upon the heirs, executors, successors and assigns of the parties hereto.

IN WITNESS WHEREOF, the parties hereto have executed this agreement the day and date first above written in duplicate.

JOHNSON COUNTY WATER DISTRICT

BY Robert Pelotas

CHAIRMAN

JOHNSON COUNTY FISCAL COURT

BY Frank Johnson

FRANK JOHNSON,
COUNTY JUDGE EXECUTIVE

AUXIER WATER COMPANY

BY Philip L. Likens

PRESIDENT

STATE OF KENTUCKY

COUNTY OF Johnson

Subscribed and sworn to before me by Philip L. Ward

as president of Auxler Water Company, Inc. on this the 6 day of

February, 1984..

My commission expires: 5-12-86.

Janet Horne

NOTARY PUBLIC

THIS INSTRUMENT WAS PREPARED BY:

J. Scott Preston

J. SCOTT PRESTON
ATTORNEY AT LAW
PAINTSVILLE, KENTUCKY 41240

STATE OF KENTUCKY

COUNTY OF JOHNSON

Subscribed and sworn to before me by

Robert Preston

on behalf of the Johnson County Water District on this the 3 day of

February, 1984.

My commission expires: 5-12-86.

Janet Horne

NOTARY PUBLIC

STATE OF KENTUCKY

COUNTY OF JOHNSON

Subscribed and sworn to before me by FRANK JOHNSON, County Judge

Executive of Johnson County for and on behalf of the Johnson County Fiscal

Court on this the 3 day of Feb., 1984.

My commission expires: 5-12-86.

Janet Horne

NOTARY PUBLIC

IN TESTIMONY WHEREOF, the party of the first part has caused this agreement to be executed by its duly appointed, acting, and qualified Commissioners, and the party of the second part has hereunto subscribed his name, this the day and date first above written.

CITY UTILITIES COMMISSION OF THE
CITY OF PRESTONSBURG, KENTUCKY

BY:

C. J. McNally
CHAIRMAN

John B. Smith
COMMISSIONER

William H. Smith
COMMISSIONER

ATTEST:

Rich H. Harker
SUPERINTENDENT

FORREST MUSIC, d/b/a
AUXIER WATER COMPANY

BY:

Forrest Music
FORREST MUSIC

KENTUCKY INFRASTRUCTURE AUTHORITY

ASSISTANCE AGREEMENT

FUND B2

PROJECT NUMBER	<u>B291-11</u>
BORROWER:	<u>City of Prestonsburg</u>
BORROWER'S ADDRESS	<u>31 North Lake Drive</u>
	<u>Prestonsburg, Kentucky 41653</u>
DATE OF ASSISTANCE AGREEMENT:	<u>May 1, 1993</u>